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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

RAYMOND J. SMITH,

CASE NO. 5:12-cv-004150 HRL

Plaintiff.

## **SECOND REQUEST FOR JUDICIAL NOTICE**

13 || VS.

14 HUNT & HENRIQUES and DOES 1-20,  
inclusive.

16 Defendants

## **REQUEST FOR JUDICIAL NOTICE**

Defendant hereby requests that the Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of Exhibit "A". A federal court must take judicial notice of facts "If requested by a party and supplied with the necessary information." Ed. R. Evid. 201(d).

22           Federal courts may ‘take notice of proceedings in other courts, both within and  
23 without the federal judicial system, if those proceedings have a direct relation to the matters  
24 at issue.’’’ *Cactus Corner, LLC v. U.S. Dept. of Agric.*, 346 F.Supp.2d 1075, 1092 (E.D.  
25 Cal.2004) (quoting *United States ex rel Robinson Rancheria Citizens Council v. Borneo,*  
26 *Inc.*, 971 F.2s 244, 248 (9th Cir. 1992)).

**Request for Judicial Notice of the following case:**

1. ORDER in the case of CAUDILLO V. PORTFOLIO RECOVERY ASSOCIAITES, LLC  
(case no. 12-cv-200-IEG) denying defendant's motion for summary judgment

1 and granting plaintiff's motion for summary judgment.  
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Dated December 9, 2013

Respectfully Submitted,

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5 274880  
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s/ Jim Q. Tran  
Jim Q. Tran, SBN

**COAST LAW**

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# EXHIBIT A

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MARIA CAUDILLO,

**Plaintiff,**

VS.

**PORTFOLIO RECOVERY  
ASSOCIATES, LLC**

Defendant.

CASE NO. 12-CV-200-IEG (RBB)

**ORDER:**

- 1. GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; AND**
  - [Doc. No. 28]**
  - 2. DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

[Doc. No. 29]

17 Before the Court are the parties' cross motions for summary judgment as to  
18 Defendant Portfolio Recovery Associates, LLC ("PRA")'s liability under § 1692e of  
19 the Fair Debt Collection Practices Act ("FDCPA") and corresponding sections of  
20 California's Rosenthal Fair Debt Collection Practices Act ("Rosenthal Act"). [Doc.  
21 Nos. 28, 29.] For the reasons below, the Court **GRANTS** Plaintiff's motion and  
22 **DENIES** Defendant's motion.

## BACKGROUND

This case arises from a debt collection action in San Diego Superior Court against Plaintiff Maria Caudillo. Caudillo failed to make payments on a Wells Fargo Bank, N.A., (“Wells Fargo”) credit card account ending in “7667.” Defendant PRA, a debt collector, purchased the account from Wels Fargo, and sent an initial collection letter to Caudillo on July 10, 2009, stating that PRA purchased the

account. PRA sent additional collections letters to Caudillo on November 6, 2009  
1 and January 26, 2010. Over a year and a half later, on July 21, 2011, PRA filed a  
2 common counts form complaint against Caudillo in San Diego Superior Court,  
3 attempting to recover \$4,845.61. [See Doc. No. 28-7, Ex. A (“the form  
4 complaint”).]

5 The form complaint repeatedly identifies PRA as “Plaintiff,” [see 28-7 at  
6 3,4,5], but makes no mention of Wells Fargo, the original creditor, nor to any  
7 specific credit account. The form complaint also makes repeated reference to the  
8 subject debt being owed by Caudillo to “Plaintiff,” i.e., PRA. [See, e.g., *id.* at 4  
9 (“for goods, wares, and merchandise sold and delivered to [Caudillo] and for which  
10 [Caudillo] promised to pay plaintiff,” “for money lent by plaintiff to [Caudillo] at  
11 [Caudillo’s] request,” “for credit card purchases and/or cash advances on the credit  
12 account issued by Plaintiff . . . ”).]

13 Caudillo retained counsel, answered the form complaint, and propounded  
14 discovery requesting the identities of the parties to the alleged debt. PRA  
15 responded that Wells Fargo is the original creditor to the debt referenced in the form  
16 complaint, and subsequently filed an *ex parte* request to amend the form complaint  
17 on grounds that it “should have stated that PRA was a valid assignee of Wells Fargo  
18 Bank, N.A., the original creditor who contracted with [Caudillo].” [*Id.* at 3.]

19 On January 25, 2012, Caudillo commenced the present action, [see Doc. No.  
20 1], and on May 14, 2012, filed the operative amended complaint, [Doc. No. 16],  
21 which alleges that PRA’s failure to identify the original creditor in its form  
22 complaint violates § 1692e of the FDCPA and corresponding sections of the  
23 Rosenthal Act. The parties’ present cross motions concern whether, on the  
24 undisputed facts as a matter of law, PRA’s failure to identify the original creditor  
25 indeed constitutes a violation of § 1692e of the FDCPA and corresponding sections  
26 of the Rosenthal Act. [See Doc. Nos. 28, 29.]

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## DISCUSSION

### 1    I.    Legal Standard

2        “Summary judgment is appropriate when no genuine and disputed issues of  
3 material fact remain, and when, viewing the evidence most favorably to the  
4 nonmoving party, the movant is clearly entitled to prevail as a matter of law.”  
5 *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 950 (9th Cir. 2009) (citing Fed.  
6 R. Civ. P. 56). Where, as here, “the material facts are undisputed and resolution of a  
7 motion for summary judgment turns on a question of law . . . the court is left with  
8 the obligation to resolve the legal dispute between the parties as a matter of law.”  
9 *Gulf Ins. Co. v. First Bank*, 2009 WL 1953444, at \*2 (E.D. Cal. July 7, 2009) (citing  
10 *Asuncion v. District Director of U.S. Immigration and Naturalization Service*, 427  
11 F.2d 523, 524 (9th Cir. 1970)); *see also International Ass’n of Machinists and*  
12 *Aerospace Workers, Dist. 776 v. Texas Steel Co.*, 538 F.2d 1116, 1119 (5th Cir.  
13 1976) (“It is axiomatic that where questions of law alone are involved in a case,  
14 summary judgment is appropriate.”) (citing *Asuncion*, 427 F.2d at 524).

### 15    II.    FDCPA Claims

16        “[T]he FDCPA is a remedial statute aimed at curbing what Congress  
17 considered to be an industry-wide pattern of and propensity towards abusing  
18 debtors.” *Clark v. Capital Credit & Collection Services, Inc.*, 460 F.3d 1162, 1171  
19 (9th Cir. 2006). “It prohibits, and imposes strict liability and both statutory and  
20 actual damages for, a wide range of abusive and unfair practices.” *Heathman v.*  
21 *Portfolio Recovery Associates, LLC*, 2013 WL 755674, at \*2 (S.D. Cal. Feb. 27,  
22 2013) (citing *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1030 (9th Cir. 2010));  
23 *see also McCollough v. Johnsonb, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 952  
24 (9th Cir. 2011). “Because the FDCPA is a remedial statute, it should be construed  
25 liberally in favor of the consumer, and, when in doubt, against debt collectors.”  
26 *Heathman*, 2013 WL 755674, at \*2; *see also Rouse v. Law Offices of Rory Clark*,  
27 603 F.3d 699, 705 (9th Cir. 2010) (“the FDCPA should be construed liberally to  
28 effect its remedial purpose”); *Swanson v. Southern Oregon Credit Service, Inc.*, 869

1 F.2d 1222, 1228 (9th Cir. 1988) (“One who deliberately goes perilously close to an  
2 area of proscribed conduct takes the risk that he may cross the line.”) (internal  
2 quotation omitted).

3 In this case, Plaintiff contends that PRA’s form complaint<sup>1</sup> violates § 1692e of  
4 the FDCPA, which section “broadly prohibits the use of ‘any false, deceptive, or  
5 misleading representation or means in connection with the collection of any debt.’”  
6 *Gonzalez v. Arrow Financial Services, LLC*, 660 F.3d 1055, 1061-62 (9th Cir.  
7 2011). “In this circuit, a debt collector’s liability under § 1692e of the FDCPA is an  
8 issue of law,” “requir[ing] an objective analysis that takes into account whether the  
9 least sophisticated debtor would likely be misled by a communication.” *Id.* at 1061  
10 (internal quotation omitted); *see also Terran v. Kaplan*, 109 F.3d 1428, 1428 (9th  
11 Cir. 1997) (“the question whether language [could] confuse a least sophisticated  
12 debtor is a question of law.”).

13 “The least sophisticated debtor standard is lower than simply examining  
14 whether particular language would deceive or mislead a reasonable debtor.”  
15 *Gonzalez*, 660 F.3d at 1061-62 (internal quotation omitted). It “is designed to  
16 protect consumers of below average sophistication or intelligence, or those who are  
17 uninformed or naive.” *Id.* And although “FDCPA liability [is] not concerned with  
18 mere technical falsehoods that mislead no one, but instead genuinely misleading  
19 statements that may frustrate a consumer’s ability to intelligently choose his or her  
20 response,”<sup>2</sup> *Donohue*, 592 F.3d at 1034, “literally true statement[s] can still be  
21 misleading” and “it is well established that [a statement] is deceptive where it can be  
22 reasonably read to have two or more different meanings, one of which is inaccurate.”  
23 *Gonzalez*, 660 F.3d at 1062. As such, when “faced with ambiguous language,” a  
24 court is not “to read the language from the perspective of a savvy consumer” who

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26 <sup>1</sup> “[A] complaint served directly on a consumer to facilitate debt-collection  
efforts is [] subject to the requirements of § 1692e.” *Donohue*, 592 F.3d at 1030.

27  
28 <sup>2</sup> This “materiality requirement” is premised on the notion that “false but  
non-material representations are not likely to mislead the least sophisticated consumer  
and therefore are not actionable under §[] 1692e.” *Donohue*, 592 F.3d at 1033.

1 might be expected “to seek explanation of confusing or misleading language in debt  
2 collection letters.” *Id.* Rather, “the debt collector that fails to clarify that ambiguity  
3 does so at its peril.” *Id.; see also Becker v. Genesis Fin. Servs.*, 2007 WL 4190473,  
4 at \*6 (E.D. Wash. Nov. 21, 2007) (“courts have held that collection notices can be  
5 deceptive if they are open to more than one reasonable interpretation, at least one of  
6 which is inaccurate”); *Dutton v. Wolhar*, 809 F.Supp. 1130, 1141 (D. Del. 1992)  
7 (“least sophisticated debtor is not charged with gleaning the more subtle of [] two  
8 interpretations”). Thus, to determine PRA’s liability as a matter of law under §  
9 1692e of the FDCPA, the Court must determine whether PRA’s form complaint  
10 would confuse the least sophisticated debtor by failing to identify Wells Fargo, the  
original creditor.

11 This Court and others have repeatedly held that a debt collection complaint  
12 that “fail[s] to identify . . . the original creditor, is both deceptive and material under  
13 the least sophisticated consumer standard, [and thus] constitutes a violation of §  
14 1692e.” *Heathman v. Portfolio Recovery Associates, LLC*, 2013 WL 3746111, at  
15 \*4-5 (S.D. Cal. July 15, 2013) (recounting examples of the “easy to conceive  
16 potential frustration to the least sophisticated consumer [posed by] failure to identify  
17 the original creditor”); *Thomas v. Portfolio Recovery Associates*, Case. No.  
18 12cv1188-WQH-WMc, Dkt. No. 35 at 8-9, 11 (S.D. Cal. Aug. 12, 2013) (“The  
19 Court finds PRA’s failure to identify the original creditor in the State Court  
20 Complaint . . . constitute[s] a violation of the FDCPA.”); *Tourgeman v. Collins Fin.  
21 Services, Inc.*, 2011 WL 3176453, at \*5 (S.D. Cal. July 26, 2011) (holding that  
22 failure to identify “the original creditor unquestionably could ‘frustrate a consumer’s  
23 ability to intelligently choose his or her response,’” and stating that “the Court can  
24 conceive of nary a situation more confusing than receiving a dunning letter  
25 identifying an original creditor to whom the consumer never was indebted.”); *accord*  
26 *Isham v. Gurstel, Staloch & Charge, P.A.*, 738 F.Supp.2d 986, 996 (D. Ariz. 2010)  
27 (“To preserve the protections and policies of the FDCPA, it is important to know the  
28

proper identity of the creditor. Knowing a creditor's identity allows the 'least  
1 sophisticated consumer' to make more informed decisions on how to communicate  
2 with the creditor and avoid being misled."); *Wallace v. Washington Mut. Bank, F.A.*,  
3 683 F.3d 323, 327 (6th Cir. 2012) ("District courts have decided, and we agree, that  
4 a [] false representation of the creditor's name may constitute a false representation .  
5 . . under Section 1692e" because it may "cause[] [] confusion and delay in trying to  
6 contact the proper party concerning payment . . . and resolution of the problem.")  
7 (internal quotation omitted); *Schneider v. TSYS Total Debt Management, Inc.*, 2006  
8 WL 1982499, at \*3 (E.D. Wisc. July 13, 2006) ("without the full and complete name  
9 of the creditor . . . the unsophisticated debtor would be confused by the collection  
10 letter."); *Hepsen v. J.C. Christensen and Associates, Inc.*, 2009 WL 3064865, at \*5  
11 (M.D. Fla. Sept. 22, 2009) ("Imposing liability based on a statement incorrectly  
12 identifying the name of a creditor comports with the purposes of the FDCPA.").

13 Here, PRA's form complaint fails to identify, indeed omits any reference to,  
14 Wells Fargo, the original creditor. [See Doc. No. 28-7, Ex. A.] And it compounds  
15 that failure to identify by repeatedly referring to the purported debt as owed to, or a  
16 result of money lent or credit extended by, PRA. [*Id.* at 3,4.] Moreover, PRA  
17 conceded the importance of this omitted information by justifying its request to  
18 amend on grounds that "the complaint . . . should have stated that PRA was a valid  
19 assignee of Wells Fargo Bank, N.A., the original creditor who contracted with  
20 [Caudillo]." [Doc. No. 28-7 at 3.] PRA's conceded "failure to identify . . . the  
21 original creditor [in its form complaint], is both deceptive and material under the  
22 least sophisticated consumer standard, [and thus] constitutes a violation of § 1692e."  
23 *Heathman*, 2013 WL 3746111, at \*5; see also *Gonzalez*, 660 F.3d at 1061-62.  
24 Accordingly, the Court **GRANTS** Plaintiff's motion and **DENIES** Defendant's  
25 motion as to PRA's liability under § 1692e of the FDCPA.

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27 **III. Rosenthal Act**

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“California has adopted a state version of the FDCPA, called the Rosenthal Act.” *Riggs v. Prober & Raphael*, 681 F.3d 1097, 1100 (9th Cir. 2012); *see also* Cal. Civ. Code § 1788 *et seq.* “The Rosenthal Act mimics or incorporates by reference the FDCPA’s requirements . . . and makes available the FDCPA’s remedies for violations.” *Riggs*, 681 F.3d at 1100. “[W]hether [conduct] violates the Rosenthal Act turns on whether it violates the FDCPA.” *Id.* Thus, “[t]he Rosenthal Act establishes liability under California law for violations of the FDCPA.” *Sial v. Unifund CCR Partner*, 2008 WL 4079281, at \*4 (S.D. Cal. Aug. 28, 2008). Moreover, “[t]he Rosenthal Act’s remedies are cumulative, and available even when the FDCPA affords relief.” *Gonzalez*, 660 F.3d at 1068. Because Plaintiff establishes liability under § 1692e of the FDCPA, *see supra*, she also establishes liability under the Rosenthal Act. *Sial*, 2008 WL 4079281, at \*4. Accordingly, the Court **GRANTS** Plaintiff’s motion and **DENIES** Defendant’s motion as to PRA’s liability under the Rosenthal Act.

## CONCLUSION

For the foregoing reasons, the Court hereby:

- **GRANTS** Plaintiff's motion for summary judgment and thereby finds PRA liable under both the FDCPA and the Rosenthal Act for violations of § 1692e; and
  - **DENIES** Defendant's motion for summary judgment in its entirety.

## IT IS SO ORDERED.

DATED: August 13, 2013

Irma E. Gonzalez  
IRMA E. GONZALEZ  
United States District Judge